IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 808 OF 2001
WITH
CIVIL APPLICATION NO. 994 OF 2001

Narsu Govind Yadav
alias Sutar ..Appellant

Vs.

Pune Municipal Corporation
and ors. ..Respondents

Mr. Vilas Tapkir for appellant.
Mr. R.G. Ketkar for respnodent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : April 18, 2007.

P.C.:

1. Heard Mr. Tapkir the learned counsel for the appellant and Mr. Ketkar the learned counsel for the respondent-Corporation.

2. The plaintiff i.e. Narsu Govind Yadav @ Sutar was issued a notice dated 30/3/1988 by the defendant no.1- Pune Municipal Corporation calling upon him to demolish the shed and the room made of bricks and tin-sheets admeasuring 18 ft. x 20 ft. and located

on the plot CTS No.46/1A/2, Parvatigaon under the Pune Municipal Corporation area. He challenged this notice in RCS No. 576 of 1988 and sought a declaration that it was illegal and, therefore, was required to be cancelled. He also sought permanent injunction restraining the Corporation by itself or any of its officers from demolishing the sheds/rooms. The challenge to the notice was raised on more than one grounds. Firstly, he contended that the suit structure was standing much before the Corporation came into existence and that the structure was legal and authorised. Secondly, he claimed that CTS No.46/1A/2 was declared a slum area and, therefore, the Corporation had no right to issue the impugned notice under Section 478 of the Bombay Provincial Municipal Corporation Act, 1949. On all the points raised by the plaintiff, the trial court held against him on assessing the evidence by its judgment and order dated 30/4/1993 and consequently the suit was dismissed. The plaintiff, therefore, challenged the said decree passed by the trial court in Civil Appeal No. 511 of 1993 which also came to be dismissed by the learned III Additional District Judge at Pune vide

his judgment and order dated 18/9/2001.

3. The evidence on record has proved that the Pune Municipal Corporation came into existence with effect from 15/9/1950 and the Corporation had issued another notice under Section 260(1) of the Bombay Provincial Municipal Corporation Act, 1949 to the defendants to demolish the suit structure as being unauthorised and on or about 1/1/1983 the structure was demolished. The Corporation noticed that the structure was again put up by the plaintiff and, therefore, impugned notice at Exh.63 was issued. The measurements of the structure mentioned in the said notice was 10 ft. x 10 ft. and 18 ft. x 20 ft., whereas in the photo passes, on which the plaintiff relied upon, the area was shown as 10 ft. x 18 ft. and 40 ft. x 13 ft. The evidence further indicated that the plaintiff had approached the Tahsildar by way of an application to record his name in the suit property and it was noticed that the photo passes relied upon by him were issued sometimes on 11/7/1987 or around that time. The address in the photo pass was shown as Plot No.47, whereas by way of amendment

it was shown as CTS No.46/1 instead of Survey No.46. It has also come on record that prior to the impugned notice the plaintiff was called upon to accept the alternative accommodation and he refused to respond to the same.

4. On the issue of the slum area having been declared, both the courts below have recorded concurrent findings that there was no such declaration in respect of the suit plot. The plaintiff during the pendency of the appeal before the Lower Appellate Court had submitted an application at Exh.47 and contended that those huts which were erected upto the year 1995 were protected by the State Government as per its policy. The plaintiff's statement was recorded at Exh.36 in which he stated that these huts exist on the area admeasuring 18 ft. x 20 ft. The documents at Exhs. 37, 38, 39 and 42 point out that the plaintiff was doing business at Survey No.46 and the licence was issued in the name of the plaintiff to that effect in the year 1991. The Lower Appellate Court also agreed that in the documents submitted by the plaintiff, he was occupying CTS No.46/1A/2 and

merely on the basis of the 7x12 extract in respect of the said plot he claimed that it was declared as a slum. As noted earlier, both the courts below have recorded a finding against the plaintiff on this issue.

5. Thus, the challenge of the plaintiff to the impugned notice was turned down by both the courts below and these concurrent findings recorded by way of fact finding exercise do not raise any substantial question of law for the consideration of this court.

6. Hence the second appeal is dismissed.

7. Civil Application No. 994 of 2001 does not survive and the same shall stand disposed as such.

(B.H. qMarlapalle,J.)